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No 113

31 Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Livingston T. Merchant

DATE May 29, 1959

FROM : Martin J. Billenbrand *MJB* *4410 501036**42-11* *1570**3/13/6*SUBJECT: Transmitting Draft Public Statement Prepared in Department
in Connection Berlin Contingency Planning

There is attached for your information a copy of the draft of the public statement which would be made, in accordance with the tripartite contingency planning paper of April 4, if and when the Soviet Government announced the imminent turnover of the check points to the GDR. Copies of this draft have been passed to the British and French Embassies in Washington as a basis for the preparation of a tripartite draft by the Murphy group.

The draft is based on the assumption that a separate solution for Berlin will not be reached at Geneva and that the Soviet Union will not acknowledge the GDR check point presented as its agents.

It would seem that the query made in Bonn's telegram 2571 Washington, repeated Geneva 106 (Bill Tyler called me about this message earlier today and asked that I bring it to your attention) is answered by the draft statement, if I understand Bonn's point correctly. What I assume the Department will say in response to the Embassy's telegram is that really three different situations were envisaged by contingency planners:

- (a) Express admission by Soviets of an agency relationship;
- (b) A solution along the lines of the fallback position proposed for consideration by the American Delegation to the Working Group meeting in London; and
- (c) A situation where no agreement is reached with the Soviets and they explicitly reject any agency relationship..

It is to the last of these that the solution contained in the attached draft statement would presumably apply.

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A copy of Bonn's telegram 2671 is attached for convenient reference. (Mr. Merchant's copy only)

cc: Mr. Becker
Mr. Smith

USDEL:W/Willenbrand/va

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INCOMING TELEGRAM

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762.00/5-2959

CONTROL: 1384

RECD : 5:19 PM
MAY 28, 1959

FROM : DOWNI

ACTION : DEPARTMENT

INFO : GENEVA 106, MAY 28, 5:00 PM

PRIORITY

SENT DEPARTMENT 2671. REPEATED INFO FROM GENEVA 106

GENEVA FOR MILLEGRAM

ON RETURNING DOWN, I WAS TOLD FRENCH REPRESENTATIVE MEETING HAD INFORMALLY ASKED CLARIFICATION ON FOLLOWING SPECIFIC POINT. FRENCH QUESTION WAS WHETHER THE GDR REPRESENTATIVES ARE TO BE CONSIDERED SOVIET AGENTS IN EVENT SOVS DO NOT EXPLICITLY ACKNOWLEDGE AGENCY RELATIONSHIP WITH GDR.

WOULD OUR ANSWER BE CORRECT IF WE INTERPRET PARA 5 OF DEPTTEL 2780, MAY 15, 1959, AS MEANING THAT IF SOVS TRANSFER JURISDICTION ACCESS CONTROL POINTS TO GDR, AND UNLESS SOVS EXPLICITLY REPEAT EXPLICITLY REJECT AGENCY RELATIONSHIP, WE ARE IN FACT READY DEAL WITH GDR ON ACCESS MATTERS EXACTLY ON SAME BASIS AS WE HAVE WITH SOVIETS?

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(To be made by the United States, the United Kingdom, and France if and when the Soviet Union announces the imminent turning over to the GDR of the checkpoints for Allied access to Berlin.)

1. By agreement among the United States, the United Kingdom, France, and the Soviet Union and in accordance with practices which have developed over the past fourteen years, the Soviet Forces in Germany carry out certain functions having to do with the movement of the personnel and supplies of the United States, British, and French Forces between West Germany and Berlin. As concerns Allied movements by rail and highway, the Soviet Forces have verified the identity of the train, convoy, or vehicle as a United States, British, or French movement entitled to free passage to and from Berlin on the basis of the rights of the United States, the United Kingdom, or France as an occupying power in Berlin. The identification procedure consists of the presentation at the Soviet checkpoints of Allied movement orders and certain documents identifying Allied convoys and military trains and of the stamping of the movement orders by Soviet officers of the date and time of passage. As concerns Allied access to Berlin by air, the Soviet functions have consisted of exchanging flight information in the Berlin Air Safety Center in order to assure, for purposes of safety, an adequate separation of flights in the Berlin air corridors.

2. Recent statements of the Soviet Government indicate that the Soviet personnel performing these functions may soon be withdrawn. In view of this situation, the Governments of the United States, the United Kingdom,

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Kingdom, and France believe it appropriate to indicate the legal significance of such action on the part of the Soviet Government and what steps they will take to assure the orderly movement of their traffic to and from Berlin.

3. First, it is clear that no Soviet unilateral action can affect

The rights of the United States, the United Kingdom, and France. The rights of the Western Powers to be and to remain in Berlin, and to have unrestricted access to Berlin, derive from the defeat of Nazi Germany and the assumption of authority in Germany by the Allied Powers. These rights can be terminated only by the agreement of the Powers concerned. The United States, the United Kingdom, and France intend to maintain their rights to remain in Berlin and to have free access to Berlin until a peace treaty can be concluded with the freely chosen representatives of a reunited German state.

4. Certain quadripartite agreements, both explicit and based on custom and precedent, define the manner in which the Western Powers' right of free access to Berlin is to be exercised. These agreements establish certain access facilities for the Western Powers (The Berlin-Helmstedt autobahn, 21 train paths daily between Berlin and Helmstedt, and 3 air corridors from Berlin in the direction of Hamburg, Hannover, and Frankfurt a/M.), establish administrative procedures for the identification of Allied railroad and highway movements through the Soviet Zone, and establish procedures for the question of the Berlin Air Safety Center. In its notes of

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November 27, 1958 to the United States, British and French Governments, the Soviet Government has declared that it regards the basic agreements of the Four Powers about Berlin as null and void. The Soviet Government has further made assertions to the effect that the German authorities of the Soviet Zone may exercise control over Allied movements without regard for Allied rights or for the agreements concluded by the Four Powers.

5. These Soviet statements have no legal effect whatsoever, for one party to an international agreement cannot unilaterally abrogate the agreement. Nor may one state seek to alter the lawfully held rights of another state without the agreement of the other state. The obligations which the Soviet Union has undertaken under the four-power agreements, namely the obligation to facilitate the passage of Allied traffic via rail and highway through the Soviet Zone and the obligation to co-operate in providing the safest possible conditions for flight to and from Berlin, remain binding upon the Soviet Union. The United States, United Kingdom, and France will continue to hold the Soviet Union responsible for the discharge of these obligations until such time as the agreements on facilities and administrative arrangements for Allied access to Berlin are altered or terminated by the common agreement of all Four Powers.

6. The Governments of the United States, the United Kingdom, and France advised the Soviet Government as early as December 31, 1958 that they could not accept the substitution of the regime which the Soviet Government refers to as the "German Democratic Republic" for the Soviet Union in respect of Soviet obligations regarding Allied access to Berlin.

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The Three Governments would not object to the performance by East German personnel of those functions now performed by Soviet personnel at the rail and highway checkpoints provided the Soviet Government clearly recognized its continuing obligations under four-power agreements and acknowledged that the East German checkpoint personnel were acting as Soviet agents. The Soviet Government has not, however, proposed such an arrangement.

7. If the Soviet Government decides, under these circumstances, to withdraw Soviet personnel from the railroad and highway checkpoints and from the Berlin Air Safety Center, the Three Powers have no way of preventing such a withdrawal, nor do they believe it necessary that Soviet personnel remain. Since their access rights remain unaffected by the withdrawal and by any unilateral Soviet statements with respect to four-power agreements, the Three Powers can only act on the assumption that the Soviet Government no longer considers the administrative procedures followed heretofore with respect to Allied access to be necessary.

8. If the Soviet Government declines to co-operate, on the basis of four-power agreements, in assuring the orderly movement of the traffic of the Three Powers to and from Berlin, the Three Powers themselves have full authority to make whatever arrangements may be suitable for this purpose. In the exercise of this authority, the Three Powers have decided that they will act as follows in the event of the withdrawal of Soviet personnel from the highway and railway checkpoints and from the Berlin Air Safety Center.

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9. As far as air access is concerned, the Three Powers will continue to exchange flight safety information among one another in the Berlin Air Safety Center and will assume that the Soviet Government has decided that it can and will, without the benefit of exchange of flight information in the Center, maintain absolute separation of Soviet aircraft and all other aircraft operating in the Soviet Zone from the aircraft of the Three Powers flying in the Berlin corridor and the Berlin control zone. In this connection, the Three Powers desire to reiterate that four-power agreements did not fix an upper limit for the Berlin air corridors.

10. As far as surface access is concerned, the Three Powers recognize that the mixture of their traffic and interzonal traffic on the same routes makes it necessary to follow some uniform procedure by which an Allied movement in the Soviet Zone can be readily identified as such and thus be entitled to unrestricted passage and exemption from the police, customs, currency, and other border controls applied to other transit traffic. To establish the identity of their movements, the appropriate authorities of the Three Powers in Germany will therefore prepare a special movement

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order for each movement,^o in duplicate for movements by train and in triplicate for movements by highway, certifying that the vehicles, travelers, and goods concerned are an Allied movement proceeding to or from Berlin in connection with the occupation of Berlin and entitled to free passage. A copy of each movement order will be handed to the border control personnel at Marienborn for trains and at both Marienborn and Neuwes for convoys, trucks, and automobiles. Each movement order will be stamped by ^{an} Allied officer before entry into the Soviet Zone to show the date and time of its use.

11. The Three Powers may find it necessary, in the light of further experience, to take other steps to assure the orderly movement of their traffic in the situation caused by the Soviet Government's unilateral termination of the procedures heretofore in effect. After much reflection, however, they have concluded that the procedure described in the foregoing paragraphs more than meets the need for the identification of Allied movements. Any attempt on the part of the German authorities of the Soviet Zone to subject Allied traffic to other procedures or to enforce controls on Allied traffic will be regarded by the Three Powers as an unacceptable interference with their right of unrestricted access to Berlin.

* To be modified if the decision is taken to identify individuals rather than movements.